

<p style="text-align: right;">Page 61</p> <p>1 owners as I'm passing across it. It may have been</p> <p>2 in conjunction with safety training. I don't</p> <p>3 recall.</p> <p>4 Q Does Marine Safety Consultants do safety training</p> <p>5 for vessel owners?</p> <p>6 A Yes.</p> <p>7 Q Who at Marine Safety Consultants actually is an</p> <p>8 instructor?</p> <p>9 A Myself.</p> <p>10 Q Who else?</p> <p>11 A Mr. Rick Harden, H A R D E N.</p> <p>12 Q Anyone else?</p> <p>13 A Mr. Tom Tulus is a drill conductor.</p> <p>14 Q Anyone else?</p> <p>15 A Mr. Dana Collier is a drill conductor.</p> <p>16 Q Is there anyone else?</p> <p>17 A Collier also is a drill conductor, but he is not</p> <p>18 actively involved in doing that except on a fill-in</p> <p>19 basis. It's primarily Tom. Tom Tulus, Dana Collier</p> <p>20 and Rick Harden.</p> <p>21 Q How frequently do you yourself do instruction,</p> <p>22 safety instruction training when you are being paid?</p> <p>23 A Last time was last Thursday that I put on a one-day</p> <p>24 course.</p>	<p style="text-align: right;">Page 63</p> <p>1 or safety drills which are mandated by the federal</p> <p>2 government involve the operation of winches?</p> <p>3 A Not specifically the operation of the winches; but</p> <p>4 as far as recognition of hazards and safety guards</p> <p>5 on winches and blocks and machinery, there is a</p> <p>6 requirement that boat owners and operators maintain</p> <p>7 safety guards and just a general plan that the</p> <p>8 machinery be kept in good operating condition.</p> <p>9 Q Is there a specific regulation that requires moving</p> <p>10 machinery, rotating machinery have a safety guard on</p> <p>11 it when it's on a commercial fishing vessel,</p> <p>12 correct?</p> <p>13 A Yes.</p> <p>14 Q But with respect to mandatory training instruction</p> <p>15 and drills, none of that mandatory training,</p> <p>16 instruction and drills relates to the operation of</p> <p>17 the winch. Would you agree with that?</p> <p>18 A Not specifically the operation of the winch but in</p> <p>19 the operation of the vessel as a whole, the concept</p> <p>20 of safe work practices is stressed in the safety</p> <p>21 training programs.</p> <p>22 Q But --</p> <p>23 A It's part of the curriculum.</p> <p>24 Q You would agree with me with regard to the coast</p>
<p style="text-align: right;">Page 62</p> <p>1 Q Who was that for?</p> <p>2 A The City of New Bedford Fishing Vessel Safety Task</p> <p>3 Force.</p> <p>4 Q Is that a government type of organization? What is</p> <p>5 it?</p> <p>6 A City of New Bedford couple years ago promoted active</p> <p>7 involvement in fishing vessel safety training, and a</p> <p>8 task force of professionals was put together at the</p> <p>9 request of the city and then a team of instructors</p> <p>10 and trainers started putting on safety training</p> <p>11 classes for the City of New Bedford on behalf of or</p> <p>12 through the cognizance of the City of New Bedford;</p> <p>13 and also performed for Massachusetts Fisherman's</p> <p>14 Partnership and individual boat owners or fleet</p> <p>15 owners will call and ask for training or drills.</p> <p>16 Q There is a coast guard requirement for safety</p> <p>17 training and safety drills on commercial fishing</p> <p>18 vessels, correct?</p> <p>19 A A federal regulation.</p> <p>20 Q And that requires there would be specific types of</p> <p>21 safety training and specific types of safety drills</p> <p>22 on commercial fishing vessels, correct?</p> <p>23 A Yes.</p> <p>24 Q You agree with me that none of that safety training</p>	<p style="text-align: right;">Page 64</p> <p>1 guard regulations that require safety training and</p> <p>2 safety drills, they are fairly specific in terms of</p> <p>3 what must be trained and what must be drilled?</p> <p>4 Would you agree with that?</p> <p>5 A That's correct.</p> <p>6 Q For example, survival suits, must instruct the crew</p> <p>7 regarding survival suits, and there are specific</p> <p>8 drills with respect to the crew must actually go</p> <p>9 through a set of drills with survival suits,</p> <p>10 correct?</p> <p>11 A That's correct.</p> <p>12 Q The same is not true with respect to operation of</p> <p>13 the winches?</p> <p>14 A No. As I said, there is no specific requirement of</p> <p>15 training of the operation of the winches, but there</p> <p>16 is in the curriculum the concept of safe work</p> <p>17 practices to prevent accidents from happening</p> <p>18 involving the entire vessel, not just a specific</p> <p>19 piece of equipment.</p> <p>20 Q You would agree with me there is no coast guard</p> <p>21 requirement on an inspected fishing vessel that the</p> <p>22 operators of the vessel, there is no requirement</p> <p>23 that the operators of the vessel train the crew</p> <p>24 specifically with respect to operating the main</p>

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<p style="text-align: right;">Page 65</p> <p>1 winch?</p> <p>2 A That's correct.</p> <p>3 Q And there is no coast guard regulation that says</p> <p>4 they must drill, perform drills prior to the boat</p> <p>5 leaving the dock with respect to the operation of</p> <p>6 the main winch?</p> <p>7 A That is correct.</p> <p>8 [Exhibit 5 marked for identification]</p> <p>9 Q I'm going to show you a document marked as Exhibit</p> <p>10 5. Do you see that?</p> <p>11 A Yes.</p> <p>12 Q That is your most recent affidavit?</p> <p>13 A Yes.</p> <p>14 Q Directing your attention to item 10, paragraph 10 --</p> <p>15 A Yes.</p> <p>16 Q -- it says "I have been on this boat and observed</p> <p>17 the operation of the winch in the past and am</p> <p>18 familiar with it's characteristics."</p> <p>19 A Yes.</p> <p>20 Q When were you on the boat and observed operation of</p> <p>21 the winch?</p> <p>22 A Well, I have been on this boat and observed the</p> <p>23 operation of this type of winch in the past. That's</p> <p>24 what I intended to say there. I have not seen this</p>	<p style="text-align: right;">Page 67</p> <p>1 A This is what I'm going to charge, a thousand dollars</p> <p>2 an hour.</p> <p>3 Q We have the next page on Exhibit 6 we have your</p> <p>4 resumé?</p> <p>5 A Yes.</p> <p>6 Q The last page of Exhibit 6, is this a history of all</p> <p>7 the cases that you have testified to since 2003?</p> <p>8 A That's what it says. That's what it is.</p> <p>9 Q Is the last page of Exhibit 6 all the cases which</p> <p>10 you have testified in since the year 2003?</p> <p>11 A I believe it is, whether or not -- Here is my</p> <p>12 practice: When I testify in a case like today, I go</p> <p>13 back to the office and I'll ask my secretary to</p> <p>14 include this case on my list to add it on. Whether</p> <p>15 or not someone had fallen through the cracks, I</p> <p>16 won't say these are the only cases, but to the best</p> <p>17 of my knowledge these are the only cases I have</p> <p>18 testified on in 2003, 2004, 2005 and 2006 including</p> <p>19 today's as an added.</p> <p>20 Q You are aware when you testify as expert witness in</p> <p>21 a federal court case that you have got to give the</p> <p>22 other side a list of cases that you have testified</p> <p>23 in in the last four years?</p> <p>24 A Yes, that's why I maintain this.</p>
<p style="text-align: right;">Page 66</p> <p>1 specific winch in operation. I may have, but I</p> <p>2 don't recall specifically, but I have seen this type</p> <p>3 of winch.</p> <p>4 Q So you have been on this boat, correct?</p> <p>5 A Yes.</p> <p>6 Q FISHING VESSEL MY WAY?</p> <p>7 A Yes.</p> <p>8 Q And you have also observed the operation of Marco</p> <p>9 brand winches?</p> <p>10 A Yes.</p> <p>11 Q But you have never observed the operation of the</p> <p>12 Marco winch that was on the MY WAY, is that correct?</p> <p>13 A I may have but I don't have a specific memory for</p> <p>14 this case of operating -- I did not operate this</p> <p>15 winch or see it in operation before this case.</p> <p>16 [Exhibit 6 marked for identification]</p> <p>17 Q I show you another document that we'll mark as</p> <p>18 Exhibit 6. This is a cover letter that you sent to</p> <p>19 Mr. Regan dated September 21.</p> <p>20 A Yes.</p> <p>21 Q Your hourly rate is 85 bucks an hour?</p> <p>22 A Off the record I think it's up to 250 now. Yes,</p> <p>23 that's my rate.</p> <p>24 Q That's what you are going to charge me?</p>	<p style="text-align: right;">Page 68</p> <p>1 Q 2006 you listed two cases the SHEARWATER and Frank</p> <p>2 Saco?</p> <p>3 A Yes.</p> <p>4 Q SHEARWATER, what was that case about?</p> <p>5 A The SAILING VESSEL SHEARWATER case involved a wooden</p> <p>6 hull sailing scalloper that is a coast guard-</p> <p>7 certified passenger vessel that was hauled out of</p> <p>8 the water in New York on Long Island; and while they</p> <p>9 were launching it, the travel lift suffered an</p> <p>10 accident and the vessel suffered some damage. So I</p> <p>11 was called to give deposition as to the extent of</p> <p>12 the damages that I observed when I did a damage</p> <p>13 survey.</p> <p>14 Q You performed a damage survey on the SHEARWATER?</p> <p>15 A Yes.</p> <p>16 Q And your expertise is the cost of the repairs?</p> <p>17 A Extent of the damages and the estimated cost of</p> <p>18 repairs.</p> <p>19 Q You were initially hired by the hull insurer?</p> <p>20 A Well, there were three parties involved with that</p> <p>21 case. There's the ship owner, the shipyard and --</p> <p>22 and the ship. Two parties. I was called by the</p> <p>23 ship owners. I'm sorry, I was called by the</p> <p>24 shipyard's attorney to give testimony as to what I</p>

<p style="text-align: right;">Page 69</p> <p>1 observed during the survey. There were three</p> <p>2 surveyors involved.</p> <p>3 Q When you performed the survey of the SHEARWATER, who</p> <p>4 hired you when you performed the survey?</p> <p>5 A The hull underwriters on behalf of the vessel owner.</p> <p>6 Q Underwriters is the name of the insurance company,</p> <p>7 the marine insurer?</p> <p>8 A Yes.</p> <p>9 Q The testimony you gave by deposition, was that, were</p> <p>10 you listed as an expert witness in that case?</p> <p>11 A No.</p> <p>12 Q Did the people who hired you, were they the ones who</p> <p>13 wanted you to testify or some other person?</p> <p>14 A Some other person.</p> <p>15 Q Do you know why they wanted you to testify if they</p> <p>16 didn't hire you?</p> <p>17 A Well, do you want me to tell you the facts of the</p> <p>18 case?</p> <p>19 Q No. Do you remember coming in low and the other</p> <p>20 side --</p> <p>21 A No, nothing to do with that.</p> <p>22 Q Frank Saco, Frank Saco you testified at trial. What</p> <p>23 kind of case was Frank Saco?</p> <p>24 A A tugboat case. Mr. Saco was a crew member aboard a</p>	<p style="text-align: right;">Page 71</p> <p>1 Q Have you ever worked as a crew member on a sailboat?</p> <p>2 A Yes.</p> <p>3 Q Was that at the academy?</p> <p>4 A Yes.</p> <p>5 Q On the EAGLE?</p> <p>6 A Yes.</p> <p>7 Q Since the EAGLE have you ever worked as a crew</p> <p>8 member on the sailboat?</p> <p>9 A No.</p> <p>10 Q In the case in 2005, Steve Powell, what type of case</p> <p>11 was that?</p> <p>12 A It was a seaman's injury case on a commercial</p> <p>13 fishing vessel.</p> <p>14 Q What we talked about, a Jones Act case?</p> <p>15 A Yes.</p> <p>16 Q Were you hired as an expert witness?</p> <p>17 A I don't recall if I was an expert witness or a fact</p> <p>18 witness. It is a deposition in my office. I don't</p> <p>19 recall. Never went to trial.</p> <p>20 Q Who was the defense attorney?</p> <p>21 A I believe that was Tom Muzyka.</p> <p>22 Q Who was the plaintiff's attorney?</p> <p>23 A An attorney from New Jersey. I don't recall his</p> <p>24 name.</p>
<p style="text-align: right;">Page 70</p> <p>1 tugboat and he was bringing a suit against the</p> <p>2 owners of the tugboat.</p> <p>3 Q Was it a Jones Act case?</p> <p>4 A Yes.</p> <p>5 Q Jones Act case is when a seaman gets injured on the</p> <p>6 job and wants money?</p> <p>7 A Yes, that's one quick summary of it.</p> <p>8 Q Were you testifying as an expert witness?</p> <p>9 A Yes.</p> <p>10 Q Were you testifying as an expert witness on behalf</p> <p>11 of the defense attorney?</p> <p>12 A Yes.</p> <p>13 Q Who was the defense attorney?</p> <p>14 A Clinton & Muzyka.</p> <p>15 Q Who specifically at Clinton & Muzyka?</p> <p>16 A Tom Muzyka.</p> <p>17 Q Who was the plaintiff's attorney, if you know?</p> <p>18 A Mr. Kaplan.</p> <p>19 Q David Kaplan?</p> <p>20 A Yes.</p> <p>21 Q Have you ever worked on a tugboat before?</p> <p>22 A Have I ever worked on a tugboat?</p> <p>23 Q As a crew member.</p> <p>24 A No.</p>	<p style="text-align: right;">Page 72</p> <p>1 Q Tom Muzyka represented the --</p> <p>2 A -- boat owner, yes.</p> <p>3 Q And next case Roland Caron?</p> <p>4 A Caron.</p> <p>5 Q What was that case about?</p> <p>6 A Mr. Caron was a crew member aboard a commercial</p> <p>7 fishing vessel from Portland, Maine, and he</p> <p>8 allegedly suffered an injury and it involved the</p> <p>9 facts and circumstances surrounding that injury.</p> <p>10 Q Did the Powell case, what was the piece of equipment</p> <p>11 that involved in Mr. Powell's alleged injury?</p> <p>12 A There was no piece of equipment. His hand became</p> <p>13 infected.</p> <p>14 Q Fish poisoning?</p> <p>15 A It is called fish poisoning, but it's not</p> <p>16 necessarily -- They call it fish poisoning because</p> <p>17 it happens aboard a fishing vessel, but it's not</p> <p>18 necessarily involving fishing.</p> <p>19 Q What was your area of expertise in the Powell case?</p> <p>20 A I was a fact witness as to when I inspected during</p> <p>21 the investigation aboard the vessel.</p> <p>22 Q And more specifically?</p> <p>23 A Well, Powell stated, claimed that he suffered his</p> <p>24 infection, his hand became infected while aboard</p>

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